the cable or knew he was likely to do so and that, accordingly, the conviction must be set aside.

CRIMINAL REVISION.

On the night of the 20th March 1939 M.M. anchored the Tongkang (sailing boat) of which he was captain near a cable belonging to the Posts and Telegraphs Department in the Bernam River. During the night the anchor dragged and as a result the cable was damaged.

He was charged before the Magistrate, Sabak Bernam, with committing mischief under section 431A of the Penal Code and in answer to the charge pleaded guilty. His plea of guilty was recorded by the Magistrate who convicted him and imposed a fine of $25.

The record reached the Legal Adviser in connection with civil proceedings* which the Posts and Telegraphs Department wished to institute in the matter. On the record being referred by the Legal Adviser to the Supreme Court for revision under Chapter XXXI of the Criminal Procedure Code the Chief Justice on the 28th June 1939 acting in revision set aside the conviction and ordered the fine of $25/- paid by the accused to be refunded.

Poyser, C.J.—This case was brought to my notice by the Deputy Public Prosecutor.

The accused pleaded guilty to a charge of causing mischief by cutting a cable belonging to the Posts and Telegraphs Department. The facts appear to be as follows. The accused anchored his boat near the cable in question, and during the night when the accused and his crew were asleep the anchor dragged and the cable was cut.

To establish a charge of mischief it must be proved that the accused intended to cause wrongful loss or damage or that he committed an act with the knowledge that he was likely to cause such loss or damage.

The legal position was not explained to the accused when he pleaded guilty to the charge, his statement was in effect an admission that he was responsible for the cutting of the cable but there was nothing in his statement to indicate that he intended to cut the cable or knew he was likely to do so.

Probably the accused's conduct was negligent, but negligence is not necessarily mischief, and although the accused might be held liable in civil proceedings for damages I do not think the facts disclosed justify a conviction under the Penal Code.

Acting in revision I set aside the conviction. The fine of $25/- paid by the accused will be refunded to him.

Conviction set aside.

*(The civil claim was afterwards settled.—(Ed. M.L.J.)

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

August 1, 1939.

PUBLIC PROSECUTOR v. NG FEE LEONG.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 57 of 1939]

Penal Code (Cap. 45), S. 71—cheating—accused found guilty on three charges—conviction on one—irregularity.

Where an accused person was found guilty on three charges of cheating by obtaining money by false pretences on three occasions and the Magistrate convicted him on the first charge only and acquitted him on the second and third charges on the ground that an accused should only be punished with one punishment for offences against the same person committed in the course of one transaction—

Held, that on each occasion he obtained money the accused committed a fresh offence and that he should have been convicted and sentenced on each of the charges.

MAGISTRATE'S CRIMINAL APPEAL.

The accused, a petition writer, cheated a woman by representing that he would get her land released from attachment and also stop distribution of property in which complainant had an interest. By these and other pretences he obtained different sums of money from her: $60 on 14th March 1939, $30 on the 18th March, and $20 on 31st March. In respect of these sums the accused was charged with three charges of cheating and was found guilty by the Magistrate, Tapah, who, however, convicted him on the first charge only; sentencing him to 1 month's R.I. on the first charge and acquitting him on the second and third charges, on the ground that under section 71 of the Penal Code an accused person should only be punished with 1 punishment for offences against the same person done in the course of one transaction.

Against this decision the Public Prosecutor appealed. The appeal was allowed by the Judge who ordered that convictions be entered on each of the three charges and altered the sentence to one of three months R.I. on each charge, these sentences to run concurrently.

T. V. A. Brodie, Assistant Legal Adviser, for Public Prosecutor.

Respondent absent.

Murray-Aynsley, J.—In this case the Respondent was before the Magistrate on three charges of cheating. The facts show that in the prosecution of a fraudulent design he obtained money on different occasions. The Magistrate relying on Section 71 of the Penal Code convicted the Respondent on only one charge. In this I think he was wrong. I consider that each time he obtained a sum of money he committed a fresh offence, and therefore he should have been convicted on each of the charges.

The Magistrate sentenced the Respondent to one month's Rigorous Imprisonment. The Deputy Public Prosecutor contends that this is inadequate. I agree and order that the sentence be increased to one of three months rigorous imprisonment to date from the original conviction.

Appeal allowed—sentence enhanced.

[ORIGINAL CRIMINAL JURISDICTION]

CUSSEN, J.

August 31, 1939.

PUBLIC PROSECUTOR

v.

JOHN ALIAS ARULAPPAN AND ANOTHER.

[SELANGOR CRIMINAL TRIAL No. 40 of 1939]

Criminal Procedure Code (Cap. 6), S. 113 (iii)—Evidence Enactment (Cap. 10), Ss. 24, 25, 26 and 27—Statement made during investigation—Discovery of fact—test of Admissibility of Statement.

Where a fact is discovered as the result of a statement made by an accused person during investigation under S. 113 (iii) of the Criminal Procedure Code, the admissibility or otherwise of the statement depends not upon the truth of its contents but upon its voluntary character.

CRIMINAL TRIAL.

The two accused in this Trial were charged with murder an offence punishable under section 302 of the Penal Code.

At the Preliminary Enquiry the Assistant Superintendent of Police in charge of the investigation tendered in evidence a statement made by the Second Accused during the investigation under the provisions of section 113 (iii) of the Criminal Procedure Code (Cap. 6). In that statement she related the circumstances in which she saw a tin containing jewellery belonging to the deceased being buried. As a consequence the tin and jewellery was later recovered by the Police at the spot pointed out by the Second Accused.

The Judge, during the hearing of the Trial, held that the statement was admissible.

T. D. Wallace, Assistant Legal Adviser for Public Prosecutor.

G. W. de Silva for 1st Accused.

R. P. S. Rajasooria for 2nd Accused.

Cussen, J.—In connection with the admission of the statement made by the 2nd accused I think it is desirable that I should state the reasons why I have admitted that statement in full—at least the part in question. It is important particularly because of the passage referred to in *Ameer Ali's* commentary, a work which is so frequently quoted in the Courts. That passage states that the reason for the admission under section 27 Evidence Act of the information or statement is that the discovery of the fact is a guarantee of the truth of the statement. I disagree with that. In my opinion the principle, the reason for admissibility under that section is that the discovery of the fact is a sufficient guarantee or assurance of the voluntary character of the statement. That I think is evident from an examination of the preceding sections, 24, 25 and 26, because it is clear that the principle on which the law considers the question of the admissibility or not of statements made by accused persons is not the truth of the contents of the statements but the voluntary character of the statement itself. In other words the considerations which are set out clearly in section 24. That is what the law aims to protect or safeguard, not whether the person is speaking the truth or not; it is whether the person is giving a free and voluntary statement. That is the principle of sections 24, 25, 26 and 27 of the Evidence Enactment and also of section 113 of the Criminal Procedure Code. The discovery of the fact is a guarantee or an assurance that so much of the statement as relates distinctly to the fact is a true and voluntary statement.

Statement admitted.

[APPELLATE CRIMINAL JURISDICTION]

RAJA MUSA, Ag. J.

May 14, 1938.

PUBLIC PROSECUTOR v. GOO KIAN.

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 8 of 1938]

Penal Code (Cap. 45) S. 379—theft—Prima facie case disclosed—acquittal of accused without calling upon defence—whether acquittal justified—Criminal Procedure Code (Cap. 6) S. 173A (ii)—technical offence—conviction need not be recorded.

On a charge of theft, the prosecution having established a **prima facie** case which, if unrebutted, would have warranted accused's conviction, a Magistrate is not